IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 121 OF 2001

Smt. Vaishali Samant,
Lecturer in Mathematics, Ponda Education
Society's College of Arts & Science, Farmagudi,
Ponda-Goa, aged 53 years, Indian National,
residents of Ponda-Goa.
(Registered address). .... Petitioner

V e r s u s

1. State of Goa,
   through its Chief Secretary,
   having office at Secretariat,
   Panaji-Goa.

2. The Director of Higher
   Education, Directorate of Higher Education,
   Government of Goa,
   Panaji-Goa.

3. The Goa University,
   through its Registrar,
   having Office at Taleigao
   Plateau, Bambolim-Goa.

4. Ponda Education Society's
   College of Arts & Science,
   through its Principal,
   having office at Farmagudi,
   Ponda-Goa.
   (Registered addresses). .... Respondents

Mr. M.S. Sonak & Mr. N. Barve, Counsels for the Petitioner.
Mr. S.S.Kantak, Advocate General with Ms. R. Chodankar, Additional Government Advocate for Respondent nos. 1 & 2.
Mrs. A. A. Agni, Counsel for Respondent no.3.

W I T H

WRIT PETITION NO. 108 OF 2001

Dr. Anil S. Dinge,
Reader in Chemistry,
of major age, Ponda Education
Society's College of Arts & Science,
Farmagudi, Ponda-Goa.
(Registered address). .... Petitioner

V e r s u s

1. The Director of Higher
   Education, Directorate of Higher Education,
   Government of Goa,
   Panaji-Goa.

2. The Goa University,
   through its Registrar,
   having Office at Taleigao
   Plateau, Bambolim-Goa.

3. Ponda Education Society's
   College of Arts & Science,
   through its Principal,
   having office at Farmagudi,
   Ponda-Goa.

4. State of Goa,
   through its Chief Secretary,
   having office at Secretariat,
   Panaji-Goa.
   (Registered addresses). .... Respondents

Mr. M.S. Sonak & Mr. N. Barve, Counsels for the Petitioner.
Mr. S.S.Kantak, Advocate General with Ms. R. Chodankar, Additional Government Advocate for Respondent nos. 1 & 4.
Mrs. A. A. Agni, Counsel for Respondent no.2.

A N D

WRIT PETITION NO. 120 OF 2001

Shri Srinivas Dinkarrao Gokakakar,
Lecturer in Chemistry, Ponda Education
Society's College of
Arts and Science, Farmagudi, Ponda, Goa,
aged 40 years, Indian National, resident of F-4D,
President Plaza Co-operative
Housing Society, Curti, Ponda, Goa.
(Registered address). .... Petitioner

V e r s u s

1. State of Goa,
   through its Chief Secretary,
   having office at Secretariat,
   Panaji-Goa.

2. The Director of Higher
   Education, Directorate of Higher Education,
   Government of Goa,
   Panaji-Goa.

3. The Goa University,
   through its Registrar,
   having Office at Taleigao
   Plateau, Bambolim-Goa.

4. Ponda Education Society's
   College of Arts & Science,
   through its Principal,
   having office at Farmagudi,
   Ponda-Goa.
   (Registered addresses). .... Respondents

Mr. M. S. Sonak & Mr. N. Barve, Counsel for the Petitioner.
Mr. S. S. Kantak, Advocate General with Ms. L. Dharwadkar, Additional Government Advocate for Respondent nos. 1 & 2.
Mrs. A. A. Agni, Counsel for Respondent no.3.

CORAM : **D.D.SINHA & N.A.BRITTO, JJ.**

DATE : ***21.12.2005***

JUDGMENT (Per N.A. BRITTO, J.)

The petitioners who are lecturers in respondent no.4, Ponda Education Society's College of Arts and Science, an aided College by the Government of Goa (respondent no.1), and affiliated to the Goa University (respondent no.3) and whose service conditions are governed by the Goa University Act, 1984 (Act, for short), and the Statutes framed thereunder, in these petitions filed under Articles 226 and 227 of the Constitution, assail the stand of the Government in not recognizing the grant of the Senior scales to them, in the pay scale of Rs. 3000-5000, by the College as well as by the University with effect from 01.06.1988, 20.06.1986 and 20.06.1993, respectively, and, consequently, the action of the Government ordering the recovery of payments made to them as well as the action of denying to the

petitioners the benefits of Fifth Pay Commission with effect from 01.01.1986 on the plea that the petitioners would be entitled to the said senior scales from 20.06.1995, 20.06.1989 and 20.06.1995, respectively.

2. Although the facts in each of the petitions are slightly different, the issue of law involved is common and, therefore, we proceed to dispose of the petitions by this common Judgment.

3. The petitioner Smt. Vaisali Samant, was appointed as a part time Lecturer in Mathematics in the said College from 12.05.1986 and from June 1987, she was appointed as a full time lecturer. Prior to the said appointment as lecturer in Mathematics, the petitioner had worked as :-

(a) Part time lecturer at Gogate College, Belgaum, affiliated to the Karnataka University, from June 1969 to July 1972.

(b) As full time lecturer at R. P. D. College, Belgaum, affiliated to the same University from 08.07.1972 to 15.06.1977.

(c) As part time lecturer at V. N. S. Bandekar College, Assagao, affiliated to the Goa University, from 01.08.1981 to 31.07.1982.

(d) As full time lecturer at Damodar College, Margao, affiliated to Bombay University, from 20.06.1984 to 31.08.1984.

4. The petitioner Dr. Anil S. Dinge, was appointed in the said College as a lecturer in Chemistry from 20.06.1986 in the pay scale of Rs.700-1600. The petitioner's pay scale was subsequently revised to Rs.2200/- to Rs.4000/-, with effect from 01.01.1986 and from 01.06.1990, the scale was revised to Rs.3000-5000, with effect from 20.06.1986. Prior to his appointment on 20.06.1986, in the said College, the petitioner had worked as :

(a) Part time lecturer in Chemistry at Dhempe College from June 1977 to June 1978.

(b) As full time lecturer in Chemistry at Dhempe College from June 1978 to June 1980.

(c) As part time lecturer in Chemistry at Dhempe College from July 1983 to June 1984, and

(d) As full time lecturer in Chemistry at Dhempe College from June 1984 to June 1986.

5. The petitioner Shri Srinivas D. Gokakakar, was appointed as a lecturer in Chemistry in the said College from 20.06.1987 and prior to that the petitioner had served as a lecturer in S. P. K. Mahavidyalaya, Sawantwadi from 15.11.1984 to 19.06.1986.

6. There is no dispute that grant or aid is given by the State Government under a Pattern of Assistance framed by the Government as early as 12.08.1981 and revised from time to time. The maintenance grant is given in two categories namely salary grant and non-salary grant and salary grants given by the Government are required to be credited to the College Salary Payment Account while the non-salary grant is required to be credited to the College Non-salary Expenditure Account. As per the Government, the Pattern of Assistance lays down that the expenditure on pay as per sanctioned scales would be disbursed to the members of the approved teaching staff or in other words, the salary grants are payable in terms of the approved pay of scale and to the approved teachers.

7. By Order No.DE/GIA/COL/33/87-88/1522, dated 29.08.1989, the Government introduced the amended revision of pay scales with effect from 01.01.1986, pursuant to the amendment of revision of pay scales of College and University teachers approved by the Government of India, Ministry of Human Resources Development, (Department of Education), New Delhi, by their letter dated 22.07.1988. The University was asked to implement the amended revised scheme of Revision of Pay Scales by necessary changes in the statutes/ordinances. Pursuant to that, the University had framed Statute 102, which approved the said scales and Statute 102.8 provided for Career Advancement. In terms of this Statute 102.8, every Lecturer would be eligible for placement in a senior scale of Rs.3000-5000 if he or she had completed eight years of service after regular appointment or had reached a basic pay of Rs.2,800/-, whichever was earlier and in terms of explanation below Statute 102.9, all Lecturers in the existing scale of Rs.700-1600, who had completed eight years of service on 01.01.86, would be eligible for placement in the scale of pay of Rs.3000-5000, in accordance with clauses 8 and 9 of Statute 102.

8. By another order No.DE/GIA/COL/33/87-88/2233, dated

12.12.1989, the amended Scheme of Revision as revised by the Government of India and accepted by the Government of Goa, was communicated to the University and the University was again asked to implement the amended Revised Scheme of Revision of Pay Scales along with conditions laid down by making necessary changes in the statutes/ordinances. By another communication dated 27.11.1990, issued by the University Grants Commission, the University Grants Commission informed the Vice Chancellors of all Universities that the Commission in consultation with the Ministry of Human Resource Development (Department of Education), had reconsidered the qualifying placement in the senior/selection grade at its meeting held on 11.10.1990, and had resolved that the revised guidelines for counting of previous service for purpose of senior scale/selection grade under the Career Advancement Scheme for Lecturers, would be that previous service without any break as a Lecturer or equivalent in an University, College, National Laboratory or other Scientific Organizations, would be counted for placement of Lecturers in senior scale/selection grade, subject to certain conditions mentioned therein, which conditions are not necessary for our purpose.

9. The University in exercise of the powers conferred by Section

22 and 23 of the Goa University Act, 1984, (Act for short), framed Statute no. 107 and this Statute as framed by the University was granted approval by the then Visitor and now the Chancellor, who is the Governor of Goa, by communication dated 04.12.1989. The recital to statute 107.1, makes it clear that the UGC Scheme of the Revision of Pay Scales of teachers in Universities and Colleges, 1986, was approved by the Government of Goa and incorporated in Statute 102 passed by this University and that since the Government of India had itself made certain amendments to the said Scheme of Revision of Pay Scales of Teachers in Universities and Colleges, 1986, and had circulated a revised scheme incorporating all the amendments and, as such, other changes as were consequential or incidental to the amendments and which were approved by the Government of Goa, vide the said letter dated 29.08.1989, it had become necessary to revise the scheme incorporated in Statute 102. It makes it clear that this Statute (107), which incorporates the revised scheme is issued in supersession of Statute 102 of the University. This Statute 107 has made provisions regarding career advancement in supersession to Statute 102, as follows:-

"Statute 107.12 – Every Lecturer will be placed in a senior scale of pay of Rs.3000-5000, if he/she has:

(i) Completed 8 years of service with relaxation as provided in statute 107-11 above.

(ii) Participated in two refresher courses/summer institutes, each of approximately 4 weeks duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the UGC.

(iii) Consistently satisfactory performance appraisal reports.

Explanation:

(a) All Lecturers in the existing scale of Rs.700-1600, who have completed eight years of service on 01.01.86, or thereafter, will be placed through a process of screening/selection as indicated in S. 107.18 below, in the scale of Rs.3000-5000. The benefit of service provided in S.107.11 will be available for the initial placement also.

(b) The term service in (a) above, means total service as Lecturer in one or more universities or colleges irrespective of whether it is continuous or not.

(c) Proper weightage shall be given to the part time service of the Lecturer on regular scale of pay who becomes full time Lecturer later. In such cases, two years of part time service shall be considered as equivalent to one years full time service, and any fraction which is more than half should be rounded as one full year.

10. There is no dispute that the cases of the petitioners for the purpose of granting Career Advancement were considered by the Screening Committee on 10.07.1991, at a time when Statute 107 was in force and, accordingly, the petitioner Smt. Vaishali Samant, was placed in the senior scale of Rs.3000-5000 with effect from 01.06.1988, petitioner Dr. Anil S. Dinge, was placed in the same scale with effect from 20.06.1986 and petitioner Shri Srinivas Gokakakar, was placed in the same scale with effect from 20.06.1993. Subsequently, amendments were carried out to clause (b) of statute 107.12 with effect from 06.11.1991 and the term 'service' in Statute 107.12(a) was defined as to mean total continuous service as Lecturer in one or more Universities or Colleges. A gap of two years or less would not be considered as break in service. However, this period of gap would not be counted as part of the service in counting the total service. This amendment was brought into effect from 06.11.1991 and was assented

to by the Visitor by communication dated 4/6-11-1991.

11. Pursuant to Career Advancement scales granted to the petitioners, the petitioners started drawing their salary in the senior scales. However, the auditors from the Director of Accounts, Government of Goa, raised objections to the grant of the said senior scales to the petitioners and the College sent an explanation justifying the award of senior scales to the petitioners contending that Statute no. 107 had come into effect from 06.11.1991 and, therefore, the same was applicable to the case of the petitioners.

12. After exchange of lot of correspondence ultimately, the Government hardened its stand vide communication dated 04.01.2001 addressed to the respondent-college stating that the petitioners could be granted senior scale only from 20.06.1995 (Smt. Samant), 20.06.1989 (Dr. Dinge) and 20.06.1995 (Shri Gokakakar) and not from 01.06.1988, 20.06.1986 and 20.06.1993, respectively and requested the Principal of the said College to prepare fresh Pay Fixation statements as per Government decision and forward the same to Directorate of Higher Education (respondent no.2). The respondent-college pursuant to the said

communication dated 04.01.2001, addressed letters to the petitioners that as per the directive of the Government, they were to refix their pay scales according to the audit observations and would be sending the same to the Government for their approval. It appears that the benefits of Fifth Pay Commission, which were payable with effect from 01.01.1986, were not being paid to the petitioners because the directives contained in the communication dated 04.01.2001, were not complied with. It appears that there were some other Lecturers who were similarly placed like the petitioners and some of them paid back the arrears received by them which they received by virtue of they having been granted the senior scales by the Screening/Selection Committee.

13. The first objection taken by Shri Kantak, the learned Advocate General on behalf of the Government, is that the petitioners have no locus standi to file the present petitions challenging the Order dated 04.01.2001 and communication dated 18.08.1997, since the said communications are addressed to the respondent-college/University respectively and not to the petitioners and the recovery which is sought to be done by the Government for paying salary in defiance of the Pattern of Assistance and beyond the eligibility of the petitioners is from the non-salary grants paid by the

Government to the said College and the Government has neither directed recovery of any amount from the salary of the petitioners who are Lecturers or from the salary grants payable to the teachers and given to the College. We are unable to uphold such a contention for the simple reason that the Government is trying to seek the recovery of arrears paid to the petitioners from the college and in turn the college would seek to recover the payments made to the petitioners and therefore, in our view, the petitioners have locus standi to approach this Court to challenge the actions not only of the Government but the College as well since as per the petitioners, they were duly granted the senior scale pursuant to their cases being considered by the Screening/Selection Committee and within the framing of the statute which was in force at the relevant time.

14. Firstly, the petitioners contend that the Screening/Selection Committee had reviewed the cases of the petitioners and had considered granting to them a senior scale and the action of the Screening/Selection Committee was entirely consistent with the provisions of Statute 107, which was framed by the University and, therefore, ordering recovery of arrears of amounts received by them, does not arise since it is a well recognized principle that recoveries are ordered in case of salaried persons only if

malafide or fraud on the part of the employees is established and, in such a situation, it would be rather harsh and inequitable to insist on such recovery at such late stage merely because of the objections raised by the auditors or the stand taken by the Government in accordance with the said objections which is otherwise totally inconsistent with the said Statute 107 and, more so, because there is no objection either from the respondent-College or the respondent-University. On behalf of the petitioners, learned Counsel Shri Sonak, has placed reliance on several Judgments namely those reported in ***Sahib Ram Vs. State of Haryana and others (1995 Supp (1) S.C.C. 18), State of Andhra Pradesh & Others Vs. G. Sreenivasa Rao & Others ((1989) 2 S.C.C. 290), Shyam Babu Verma & Others Vs. Union of India & Others ((1994) 2 S.C.C. 521), Administrator of Union Territory of Daman & Diu & Others Vs. R. D. Valand (1995 Supp (4) S.C.C. 593) and State of Karnataka & Another Vs. Mangalore University Non-Teaching Employees' Association & Others ((2002) 3 Supreme Court Cases 302).***

15. We need only refer to first and last. In the case of ***State of Andhra Pradesh & Others Vs. G. Sreenivasa Rao & Others (Supra),*** the Supreme Court stated that the respondents were white-collared salaried

persons and it would be too harsh for them to refund the salary already paid to them and, therefore, ordered that additional salary paid to the respondents as a result of the High Court/Tribunal judgments, should not be recovered from them. In the case of ***State of Karnataka & Another Vs. Mangalore University Non-Teaching Employees' Association & Others ((2002) 3 Supreme Court Cases 302),*** the Supreme Court observed that although the Writ Petitions were to be dismissed, the employees of the University had to be protected against the move to recover the excess payments up to 31.03.1997. The Supreme Court observed that when the employees concerned drew the allowances on the basis of financial sanction accorded by the competent authority i.e. to say the Government and they incurred additional expenditure towards house rent, the employees should not be penalized for no fault of theirs and, therefore, it would be totally unjust to recover the amounts paid between 01.04.1994 and the issuance of GO No. 42, dated 13.02.1996. In the case at hand, the petitioners are nowhere to be blamed and their cases were considered by the Screening/Selection Committee duly constituted under the Statutes of the University which was in force and therefore, in our view, it would be inequitable that the petitioners should be directed to refund the amount received by them consequent to the said senior scales being granted to

them.

16. On behalf of the petitioners, it is next contended that the senior scales given to the petitioners with effect from 01.06.1988, 20.06.1986 and 20.06.1993 respectively, are entirely consistent with the Statute 107.12 as in terms of the said Statute, and explanation (b) thereof, the Screening/Selection Committee considered the total service of the petitioners as Lecturers in one or more colleges irrespective of whether it was continuous or not and this was required to be counted in terms of the said Statute. It is their contention that both respondent no.4-College as well as Respondent no.3-University, have justified awarding senior scales to the petitioners from the said dates as being consistent with the said Statute 107.12. On behalf of the Government, the Government has sought to justify their stand by submitting that the petitioners should be awarded senior scales from 20.06.1995, 20.06.1989 and 20.06.1995 respectively and that they should recover the payments made to the petitioners in excess as per the senior scales awarded to them by the Screening/Selection Committee because the Statute 107.12 was framed by the University in defiance of the Government instructions dated 12.12.1989 by which, the guidelines framed by the University Grants Committee and approved by the Government were

intimated to the University and the Screening/Selection Committee when it met to consider the cases of the petitioners for awarding senior scales to them, the said Screening/Selection Committee ought to have also considered the communication dated 27.11.1990 of the University Grants Commission revising the guidelines in the matter of the grant of Career Advancement. It is the contentions of the Government that the University Grants Commission is a statutory body under the University Grants Commission Act 1956, and that it makes certain regulations in exercise of the powers conferred by clause E of sub-section (1) of Section 26 read with Section 14 of the University Grants Commission Act 1956, and the regulations so framed are required to be approved by the Central Government and are also required to be laid before the house of Parliament in terms of Section 27 and 28 of the said University Grants Commission Act, 1956 and, therefore, the guidelines of the University Grants Commission ought to have been followed. The stand of the University is that the University has followed the guidelines but by framing the said statute, the University has only explained and added as to what should be the meaning to be given to the term “service”. We are unable to accept the contentions raised either on behalf of the Government or for that matter on behalf of the respondent-University. In terms of Order dated 12.12.1989, issued by

the Government, and as regards Career Advancement, it was clearly stipulated therein that every Lecturer would be placed in senior scale of Rs.3000-5000, if he or she had completed eight years of service after regular appointment but with relaxation as provided in Para 12. Para 12 contemplated that candidates who at the time of the recruitment as Lecturers possessed Ph.D or M.Phil degree, would be sanctioned three and one advanced increment respectively in the scale of Rs.2200-4000 along with the benefit of corresponding years of service for the purpose of promotion. Likewise, in the communication dated 27.11.1990, issued by the University Grants Commission to the Vice Chancellors of all Universities, it was stipulated that previous service for the purpose of senior scale/selection grade under the Career Advancement Scheme for Lecturers would be previous service without any break as a Lecturer or equivalent in University, College, etc. However, what is to be noted is that the order dated 12.12.1989 or for that matter the communication dated 27.11.1990, issued by the Government and the University Grants Commission respectively are only in the nature of guidelines or administrative instructions which, though the University in normal course was required to follow or keep in mind whilst framing the Statute but once the Statute was framed by the University in a manner contemplated by the Act, it is the said

Statute which the University was required to follow and not the instructions or guidelines given either by the University Grants Commission or for that matter by the Government. In fact, on behalf of the Government, no provision of University Grants Commission Act 1956, or for that matter the Act has been quoted in support of the proposition that the guidelines issued by the University Grants Commission and approved by the Government had to be the sole basis which had to be considered at the time of framing of the Statute by the respondent-University. No provision has also been quoted on behalf of the Government to support the proposition that it is the instructions or guidelines which were required to be followed when there was a Statute which had to be given preference to as the law governing the grant of senior scales and which Statute was otherwise duly assented to by the then Visitor and now the Vice Chancellor, as required under the Act. In our view, the University being an autonomous body was certainly required to take note of the instructions of the Government or the guidelines of the University Grants Commission and follow them but the same were not binding on the University. The University had made the Statute in accordance with the procedures laid down under the Act, and this was assented to by the Visitor and therefore it is the statute which would prevail against the said executive instructions issued by the Government by Order

dated 12.12.1989 or the guidelines communicated by letter dated 27.11.1990. The instructions of the Government cannot be supported with reference to any provision in the Act nor the guidelines with any provision of the University Grants Commission Act, 1956. In this context, we may make reference to the case of ***"K. Kuppusamy & another Vs. Staff of T. N. & Others" reported in (1998) 8 S.C.C. 469,*** wherein, the Supreme Court has stated that statutory rules cannot be overridden by executive orders or executive practice and till the rule is amended, the rule applies and merely because the Government has taken a decision to amend the rule, does not mean that the rule stands obliterated. In our view, when the cases of the petitioners were considered by the Screening Committee, it is the said Statute 107.12 which held the field and which Statute was otherwise duly approved as required under the Act and, therefore, the awarding of senior scales to the petitioners within the criteria of service laid down in the Statute could not be faulted. The Government vide communication dated 18.08.1997, has purported to convey their approval to statute 107.12 along with some modifications and it is contended on behalf of the Government that there is no approval for the remaining part of statute 107. However, on behalf of the Government, no provision of the Act has been shown which requires that the statute validly framed by the University and assented to by

the Visitor, requires the approval of the State Government. The main grievance of the Government appears to be that it is the Government which funds the colleges and any Statute which involves financial liability to be incurred by the Government, requires their consent. This contention is no longer res integra and, as such, deserves to be rejected by placing reliance on what the Supreme Court stated in the case of ***State of Punjab & another Vs. Sardari Lal & Others, reported in 2003 (10) S.C.C. 253***. The Supreme Court stated thus:-

> "The University is an autonomous body and, therefore, the State Government will not be entitled to interfere with the internal administration of the University notwithstanding the fact that the State Government is the funding body until and unless the University statutes provide for the same or there is any Act of legislation conferring that power on the State Government"

Shri Kantak, the learned Advocate General, has not been able to bring to our notice any provision of the Act which requires that Government approval is necessary for any Statute to be framed, the implementation of

which Statute saddles additional financial liability on the Government. At the time of hearing, we were informed that in the very recent past, there was a Statute which had prescribed the age of retirement of the teachers of the University at 60 and the Government in order to reduce the said age from 60 to 58 years, brought about an amendment to the Act and made a provision to that effect. The Government will certainly be at liberty to amend the Act and make provision that whenever a Statute framed by the University saddles additional financial liability on the Government that prior approval would be necessary to frame such a Statute but till then, once a Statute is duly framed by the University and approved by the Visitor as required under the Act, that would be the law which the University as well as the Government would be required to follow and that being the case, in our view, the cases of the petitioners were rightly considered by the Screening Committee in terms of the said Statute 107.12 which held the field at the time when their cases were considered and if at all the Government was required to incur additional financial burden on account of the petitioners having been awarded senior scales on dates which, according to the Government, they were not entitled to, the Government has no other option but to bow down to the said law of the Statute, as it was then in force and refrain from insisting that unless the petitioners are granted the

said senior scales from 20.06.1995, 20.06.1989 and 20.06.1995 respectively, they would also not be entitled to the benefits of the Fifth Pay Commission. At the cost of repetition, we may observe that the Screening/Selection Committee, after considering the cases of the petitioners as per the law then in force namely Statute 107.12, awarded to the petitioners senior scales from 01.06.1988, 20.06.1986 and 20.06.1993. The Government cannot be heard to complain that the said Statute imposed additional financial burden on them without their approval and, therefore, the Government was not required to follow the same. As already stated, the said Statute was validly made by the procedure laid down in the Act and was required to be followed by one and all including the Government till it was amended. In our view, the Government is not at all right in ordering the respondent-College, as sought to be done by the Government vide communication dated 04.01.2001, that the petitioners' pay fixation is to be done with effect from 20.06.1995, 20.06.1989 and 20.06.1995 respectively. We, therefore, quash and set aside the said communication No.5/32/99/AC/BS/DHE/34 dated 04.01.2001. We hold that the petitioners were duly granted senior scales in accordance with law then in force i.e. to say as per the Statute 107.12 and, therefore, there is nothing which is required to be recovered from the petitioners. We hold that the

petitioners would be entitled to the scales as per the Fifth Pay Commission based on the senior scales granted to them by the Screening/Selection Committee.

We, therefore, allow the petition and make rule absolute in the above terms with no order as to costs.

D. D. SINHA, J.

N. A. BRITTO, J.

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